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08/28/2008 04:44 PM \$0.00  
Book - 9639 Pg - 8351-8357  
GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
UTAH DEPT OF ENVIRONMENTAL QUALITY  
168 NORTH 1950 W  
SLC UT 84116  
By: KSR, DEPUTY - #17 P.

When recorded return to:  
Utah Department of Environmental Quality  
Division of Environmental Response and Remediation  
Attention: Voluntary Program Coordinator  
168 North 1950 West  
Salt Lake City, Utah 84116

**RE: Former Morgan Hanauer Smelter Voluntary Cleanup Site (VCP # C045)  
4200 South Main Street, Murray, Utah**

## **CERTIFICATE OF COMPLETION**

### **1. Compliance with Terms of Voluntary Cleanup Program**

The Executive Director of the Utah Department of Environmental Quality, through his undersigned designee below, has determined that Hamlet Development and Gibbons Realty Company, hereinafter collectively referred to as "Applicant," have completed a Utah Department of Environmental Quality ("UDEQ") supervised voluntary cleanup of the real property described in Attachment A (the "Property"), in accordance with sections 19-8-108 and 19-8-110 of the Utah Code Annotated and the Voluntary Cleanup Agreement entered into on March 14, 2006. The Applicant is granted this Certificate of Completion ("COC") pursuant to section 19-8-111 and subject to the conditions set forth in section three below. Figures depicting the Property are located in Attachment B.

### **2. Acknowledgment of Protection From Liability**

This COC acknowledges protection from liability provided by section 19-8-113 of the Utah Code Annotated to an applicant who is not responsible for the contamination under the provisions listed in subsection 19-8-113(1)(b) at the time the applicant applies to enter into a Voluntary Cleanup Agreement, and to future owners who acquire the Property covered by this COC, and to lenders who make loans secured by the Property covered by the COC.

As set forth in section 19-8-113, this release of liability is not available to an owner or lender who was originally responsible for a release or contamination, or to an owner or lender who changes the land use from the use specified in the COC if the changed use or uses may reasonably be expected to result in increased risks to human health or the environment, or to an owner or lender who causes further releases on the Property. Also, there is no release from liability if the COC is obtained by fraud, misrepresentation, or the knowing failure to disclose material information. Finally, protection from liability is limited to contamination identified in the documents related to the investigation and cleanup of the Property.

SCANNED

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2008-004152

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SEP 08 2008

DEQ  
Environmental Response & Remediation

### **3. Specified Land Use for Certificate of Completion**

This COC is issued based on the Applicant's representation that the Property will be used for mixed commercial and residential uses, consistent with the residential exposure scenario described in the Risk Assessment Guidance for Superfund, Volume I, Human Health Evaluation, Parts A and B. The residential scenario is defined as exposure to adults to incidental ingestion and dermal contact to hazardous constituents for a duration of 30 years at a frequency of 350 days per year.

In addition, this COC is issued based upon compliance with the COC, as well as compliance with an Environmental Covenant (EC), dated August 12, 2008 and recorded in the records of the Salt Lake County Recorder as Entry No. 10497519 in Book 9634 at Page 2136, and the Site Management Plan (SMP), dated July 21, 2008. The COC, EC, and SMP, among other things, require:

- a. The Property shall be used in a manner that is consistent with the land use described in section three above;
- b. Non-use of the groundwater located beneath the Property via wells, pits, sumps or other means;
- c. Compliance with the Environmental Covenant recorded with the Salt Lake County Recorder on August 12, 2008 in Book 9634 on pages 2136-2164.
- d. The Site Management Plan is implemented as proposed;
- e. Reports are submitted to UDEQ as described in the SMP;
- f. Continued reimbursement to UDEQ for its oversight of activities under the EC and SMP;
- g. Continued consent to access by UDEQ to monitor compliance with the EC and SMP;

### **4. Unavailability of Release of Liability**

Use of the Property that is not consistent with section three including failure to comply with the EC or SMP described in section three shall constitute a change in land use expected to result in increased risks to human health/the environment making the release of liability in section two unavailable.

### **5. Availability of Records**

All documents discussed in this COC are on file and may be reviewed at the UDEQ/ Division of Environmental Response and Remediation office located at 168 North 1950 West, Salt Lake City, Utah.

6. Final Signature for Former Morgan Hanauer Smelter Certificate of Completion

Dated this 21<sup>st</sup> day of AUGUST 2008.

Brad T Johnson

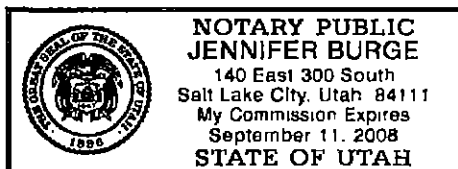
Brad T Johnson, Director  
Division of Environmental Response and Remediation  
And Authorized Representative of the  
Executive Director of the Utah  
Department of Environmental Quality

STATE OF UTAH \_\_\_\_\_)

:ss.

COUNTY OF Salt Lake )

On this 21 day of August, 2008, personally appeared before me, Brad T Johnson  
who duly acknowledged that he/she signed the above Certification of Completion as an authorized  
representative of the Executive Director of the Utah Department of Environmental Quality.



Jennifer Burge  
NOTARY PUBLIC  
Residing At: SLC

My Commission Expires 9-11-08

# **ATTACHMENT A**

## **Former Morgan Hanauer Smelter Legal Property Description**

**Former Morgan Hanauer Smelter  
4200 South Main Street  
Murray, Utah**

**Legal Property Description:**

The Former Morgan Hanauer Smelter site consists of the following-described real property situated in Salt Lake County, State of Utah:

BEGINNING at the intersection of the 1968 Murray City Annexation Boundary in Big Cottonwood Creek recorded December 31, 1968 in Book GG at Page 18 of the Salt Lake County records and a line 33.00 feet perpendicularly distant westerly of the Main Street monument line, said point being North 87°15'51" East 16.28 feet (North 87°01'34" East 16.16 feet per 1968 Murray City Annexation Plat), North 00°30'11" East 1741.07 feet (00°15'54" East 1741.07 feet by record) along said Main Street monument line, and North 76°01'54" East 33.93 feet (North 76°16'11" West 33.93 feet by record) along said 1968 Murray City Annexation Boundary in Big Cottonwood Creek from the East Quarter Corner of Section 1, Township 2 South, Range 1 West, Salt Lake Base and Meridian (Basis of Bearings being North 00°30'11" East 1518.10 feet from the found centerline monument marking the intersection of Fireclay Avenue and Main Street to the found centerline monument marking the intersection of Central Avenue and Main Street), and running thence along said 1968 Murray City Annexation Boundary in Big Cottonwood Creek the following five courses: North 76°01'54" West 23.32 feet ( North 76°16'11" West by record), North 39°46'13" West 154.80 feet (North 40°00'30" West by record), North 68°12'37" West 290.80 feet (North 68°26'54" West by record), North 76°43'06" West 457 feet (North 76°57'23" West by record) and South 29°27'50" West 50.40 feet (South 29°13'33" West by record) to the easterly right-of-way line of the UTA Light Rail Transit Corridor, formerly Union Pacific Land Resources Corporation (UPRR) as shown on the 1996 Existing Union Pacific Railroad Track Alignment Survey filed as Survey S97-09-0651 in the Salt Lake County Surveyors Office; thence along said easterly right-of-way line the following two courses: South 08°47'37" East 709.28 ( South 09°02'48" East be record) and Southerly 216.19 feet along a 2897.82 foot radius curve to the right through a central angle of 04°16'28" and along a chord of South 06°39'23" East 216.13 feet to a point on the north line of the Road Dedication Plat Fireclay Avenue as recorded in Book 99-11P at Page 310 of said records; thence along said north line North 89°57'37" East 722.30 feet (North 89°42'43" East 722.44 feet per Road Dedication Play Fireclay Avenue) to the west line of Main Street; thence along said west line North 00°30'11" East 621.48 feet to the POINT OF BEGINNING.

Containing 658,857 square feet or 15.125 acres.

**Property Tax Identification Numbers: 21-01-229-004-0000, 21-01-229-005-0000**

## **ATTACHMENT B**

### **Former Morgan Hanauer Smelter Site Map**

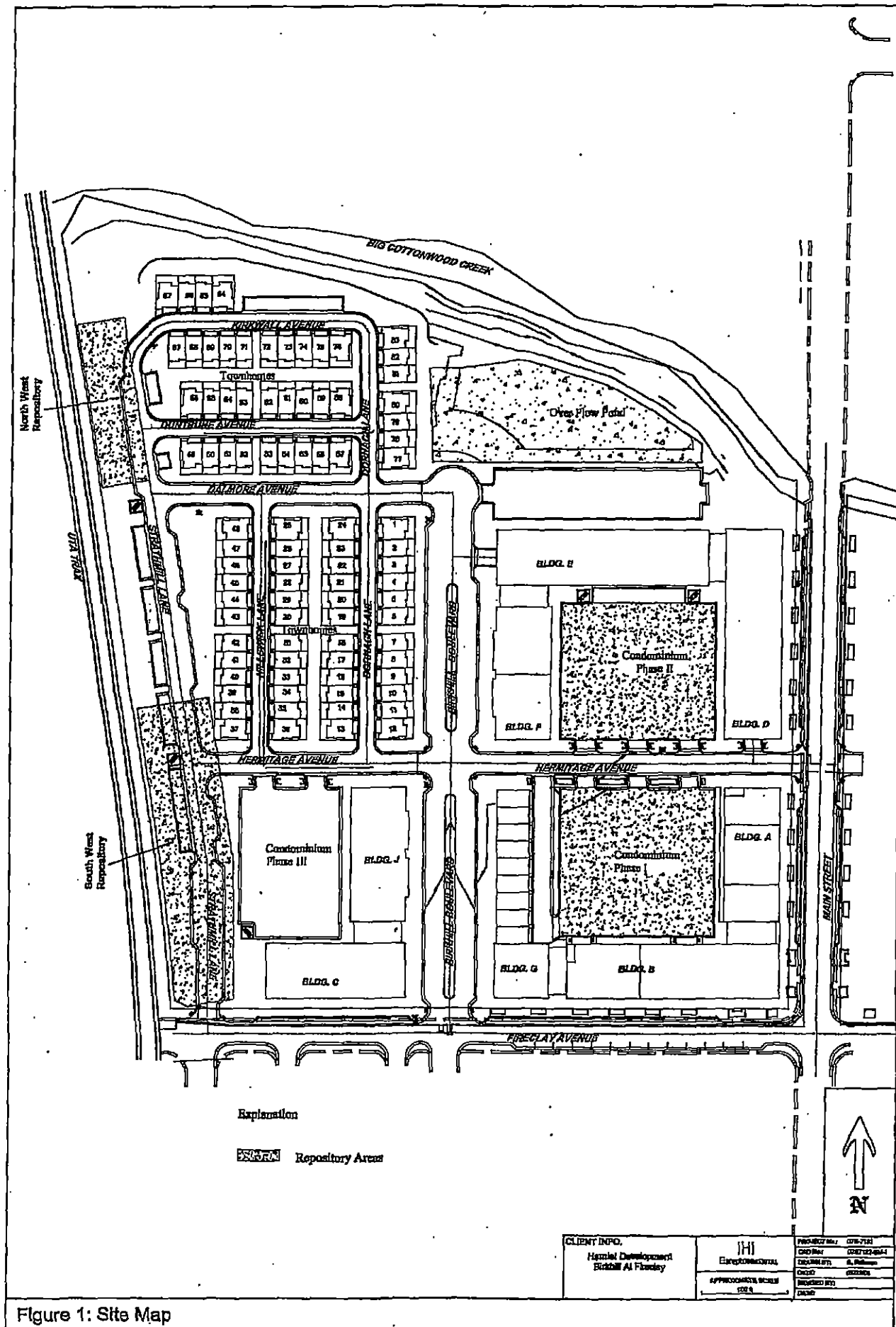


Figure 1: Site Map



# HAMLET DEVELOPMENT

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RECEIVED

AUG 13 2008

DEQ  
Environmental Response & Remediation

August 12, 2008

SCANNED

Brad T. Johnson  
Department of Environmental Quality  
168 North 1950 West  
Salt Lake City, UT 84114

DERR 2008-003817

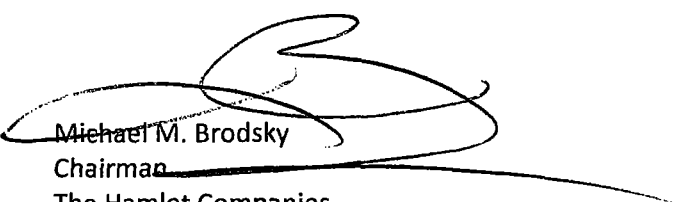
Ref: Former Morgan-Hanauer Smelter VCP Site, Murray, Utah

Dear Mr. Johnson:

Enclosed please find the recorded Environmental Covenant (EC) for the above referenced site. It continues to be a pleasure working with your department in the Voluntary Clean Up program. With the recordation of the (EC) we look forward to receiving the certificate of completion from your office at your soonest convenience.

If you could have someone contact my office when the VCP is ready we will come by and pick it up.

Very truly yours,



Michael M. Brodsky  
Chairman  
The Hamlet Companies

Enclosure(s)

cc: Joseph H. Katz  
Bryan Bryner



10497519  
8/12/2008 1:29:00 PM \$78.00  
Book - 9634 Pg - 2136-2164  
Gary W. Ott  
Recorder, Salt Lake County, UT  
US TITLE OF UTAH  
BY: eCASH, DEPUTY - EF 29 P.

When Recorded Return To:  
Birkhill at Fireclay LLC  
308 East 4500 South, Suite 200  
Murray, UT 84107

With Copy To:  
Utah Department of Environmental Quality  
Division of Environmental Response and Remediation 168 North 1950 West  
P.O. Box 144840  
Salt Lake City, Utah 84114-4840

### **ENVIRONMENTAL COVENANT**

This Environmental Covenant is entered into by Birkhill at Fireclay LLC (the "Owner") and the Utah Department of Environmental Quality, ("DEQ") pursuant to the Uniform Environmental Covenants Act, Utah Code Ann. §§ 57-25-101 et seq. for the purpose of subjecting the Property described in paragraph 2, below, to the activity and use limitations set forth herein.

#### **Background Information**

The Birkhill at Fireclay property ("Property") is composed of approximately 15.125 acres on the northwest corner of Fireclay Avenue and Main Street in Murray, Utah. The Property is bound to the south by Fireclay Avenue, to the north by Big Cottonwood Creek, to the west by the Utah Transit Authority's (UTA's) TRAX light-rail line, and to the east by Main Street. The legal description of the Property is included as **Exhibit A**.

The Property was historically used for industrial purposes dating back to the 1870s. Industrial uses of the property included the former Morgan-Hanauer Smelter, portions of the Fireclay Battery battery-cracking site, an asphalt batch plant, a slurry seal operation (i.e., asphalt patch and sealant), equipment storage and maintenance, and pallet manufacturing.

**Environmental Response Project**

In December of 2005, Hamlet Development and Gibbons Realty Company entered into an agreement with Utah's Voluntary Cleanup Program to address impacts at the Property associated with the historical industrial uses. The Property has been assigned the VCP Site ID C045 and was designated as the "Former Morgan-Hanauer Smelter."

Copies of all reports relating to investigations, risk assessments, and site remediation have been submitted to the DEQ's Voluntary Cleanup Program and are available to the public at the Agency address listed on Page 1 of this document.

**Description of Contamination at the Property**

Contaminants of Concern identified at the Property include lead, arsenic, and petroleum hydrocarbons (primarily long-chained aliphatic hydrocarbons and alkylated polycyclic aromatic hydrocarbon compounds). Lead and arsenic were detected at concentrations exceeding the Cleanup Standards established for the Property in on-site soils and in sediment within the Big Cottonwood Creek channel adjoining the Property.

A Petroleum Hydrocarbon Risk Assessment was performed to evaluate the current and future risks to human health and the environment from the specific petroleum hydrocarbon compounds detected at the Property. The risk assessment developed Site-Specific Cleanup Levels (SSCLs) for the petroleum hydrocarbon compounds at the Property. Some of the petroleum hydrocarbon concentrations detected at the Property exceed the SSCLs for the groundwater ingestion pathway (i.e., drinking impacted groundwater that underlies the Property) and the vapor intrusion to indoor spaces pathway (i.e., inhalation of vapors that could enter buildings constructed above impacted soils or groundwater). The locations of petroleum impacts detected at the site are shown on **Plate 1 and Figure 2: Petroleum Impacted Areas**, both attached hereto.

The remedy at the Property included consolidation of lead and arsenic-impacted soils, and sediments from Big Cottonwood Creek, into five on-site sub-grade repositories. Two of the repositories are located beneath the large parking lots associated with the eastern buildings, two of the repositories are located along the western property boundary, and one of the repositories is located beneath the green space on the northern boundary of the property (see **Figure 1: Site Map**).

A geotextile fabric marker barrier was placed on top of the impacted soils in each of the repositories to act as an identifier if excavation activities are ever performed in the repository areas. Non-impacted soils were placed on top of the marker barriers to bring the site to the grade required by construction at the site. Additional engineering controls (i.e., drainage layers and a clay liner) were placed above the northern repository beneath the green space to prevent infiltration of water from landscape irrigation or from storm water retention in the green space. The petroleum-impacted soils and groundwater were left in place because the only potential pathways of exposure for petroleum hydrocarbons are from groundwater ingestion and vapors

infiltrating into on-site structures, and the activity and use limitations outlined in this Environmental Covenant will be used to prevent exposures. Following the remedy, there are no current pathways of exposure for petroleum, lead and arsenic-impacted soils.

Now therefore, the Owner and DEQ agree to the following:

1. Environmental Covenant. This instrument is an environmental covenant developed and executed pursuant to Utah Code Ann. §§ 57-25-101 et seq.
2. Property. This Environmental Covenant concerns an approximately 15.125 acre tract of land in Salt Lake County, Utah, and more particularly described in Exhibit A attached hereto and hereby incorporated by reference, herein ("Property").
3. Owner. Birkhill at Fireclay LLC, which is located at 308 East 4500 South, Suite 200, Murray, Utah, is the owner of the Property. Consistent with numbered paragraph 6 herein, the obligations of the Owner are imposed on assigns and successors in interest, including any future owner of any interest in the Property or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and/or lessees (all of whom are hereinafter referred to as "Transferee"). The term "Owner" or "Owners" includes the term "Transferee" or "Transferees" unless this instrument clearly indicates otherwise.
4. Holder. Owner, whose address is listed above, is the holder of this Environmental Covenant.
5. Activity and Use Limitations. As part of the voluntary actions completed under the DEQ's Voluntary Cleanup Program, the Owner hereby imposes and agrees to comply with the Site Management Plan on file with the Division of Environmental Response and Remediation at the DEQ in connection with the Voluntary Cleanup Program Agreement for the former Morgan Hanauer site VCP # C045 which includes the following activity and use limitations.
  - A. Groundwater Limitations  
To prevent ingestion of petroleum-impacted groundwater, the Owner shall not allow groundwater underlying the Property to be used for any purpose, potable or otherwise, except for investigation, monitoring, or remediation of the groundwater. If it is observed that groundwater is being used, the Owner will immediately prevent additional use and require that the well be immediately abandoned by a Utah-licensed well driller following applicable well abandonment regulations. Any use of groundwater at the site should be reported to DEQ as set forth in paragraph 19 herein.

**B. Disturbance Limitations**

Lead and arsenic-impacted soils were placed in repositories at the site and were capped as part of the remedy to prevent human contact with the impacted soils. The caps consist of a geotextile fabric marker barrier placed directly on top of the impacted soils, then a minimum of 1 foot of non-impacted soils for areas that were covered by hardscaping (e.g., parking lots, roadways, buildings, etc.) or 2 feet of non-impacted soils for landscaped areas. In the northern repository beneath the overflow pond, additional cap materials (i.e., drainage layers and a clay liner) were used to prevent infiltration of water from landscape irrigation or from storm water retention in the green space. The landscaping and hardscaping act as engineered barriers and provide additional protection from potential human exposures to impacted soils.

The Owner shall prevent human contact with the impacted soils and shall prevent the cap and the engineered barriers (i.e., landscaping and hardscape materials) from being breached. If the Owner needs to breach the cap and the engineered barriers, the Owner shall first develop and submit to DEQ for review and comment a plan to properly characterize, handle and dispose of any potentially impacted soils that may be encountered. The Owner shall follow the plan. The Owner shall inspect the engineered barriers (i.e., landscaping and hardscape materials) on a regular basis following the Site Inspection and Verification of Controls (Site Management Plan Section 4.0). At a minimum, inspections must be performed annually. The Owner must report any accidental breaches of the engineered barriers to the DEQ and the Owner must take measures to immediately repair or replace any damage to the barriers.

**C. Vapor Intrusion Prevention Requirements**

Owner shall prevent vapor intrusion. Owner will install a Soil Vapor Mitigation System in the Townhomes overlaying or directly adjacent to the area of petroleum impacts. Townhomes numbered 1 through 4, 21 through 24, 53 through 57, 76, and 81 through 83, as set forth in Figure 2: Petroleum Impacted Areas, attached hereto, or any unit identified in a later subdivision plat and located in the same location as any of such above-numbered Townhomes, will all be constructed with the Soil Vapor Mitigation System (Figure 2). The system design will follow EPA's Guide, "Building Radon Out, A Step-by-Step Guide on How to Build Radon Resistant Homes, U.S. Environmental Protection Agency, EPA 402 K-01002, April 2001" or any updated revisions to the document. The engineering plans for the soil vapor mitigation design will be submitted by Owner to the DEQ for review and comment prior to installation of the system. After installation, as-built plans and documentation demonstrating that the Soil Vapor Mitigation System was properly installed and functioning will be submitted to DEQ. The soil vapor mitigation system will consist of a vapor barrier beneath the foundation, passive venting of soil gas, and proper

caulking and sealing of the foundations. The purpose of these controls is to prevent the potential migration of petroleum hydrocarbon vapors into occupied space, either by blocking them or providing a preferential route of migration to the atmosphere. Because the system will be constructed of a vapor barrier and a passive venting system, minimal maintenance and inspection will be needed. Owner will follow maintenance and inspection and repair procedures for the system as proposed in the DEQ reviewed engineering plans for the soil vapor mitigation system. In the event that the soil vapor mitigation system is damaged or otherwise ceases to function properly, Owner shall repair or replace such system.

Utility corridors in the area of petroleum impacts will be constructed to prevent the creation of preferential vapor migration pathways, and engineering plans for the corridors will be submitted to DEQ for review and comment before such corridors are constructed.

**D. Landscaping Limitations**

Owner will be responsible for planting and maintaining small trees, shrubs, and turf grass. Individual townhome owners can plant shallow-rooted flowers and vegetables. The Owner will not allow planting of deep-rooted (i.e., roots that could extend greater than 1.5 foot below the ground surface) trees or shrubs in areas with the geotextile fabric marker barrier, as the roots could disturb or compromise the barrier. Landscape will be inspected annually as part of the Site Inspection and Verification of Controls. Owner will inspect landscaping of their areas of control to ensure that deep-rooted plants have not been planted and that turf areas and planting areas have sufficient cover materials to prevent erosion of clean soils, potentially exposing barrier fabric.

If inspections identify the presence of deep-rooted trees or shrubs, the Owner shall take immediate action to have the trees or shrubs removed and inspect and, if necessary, restore the integrity of the barrier fabric.

**E. Utility Repair and Installation Limitations**

All planned utility corridors have been excavated to a depth of 1 foot below the utilities, a geofabric textile marker has been installed, and the excavation has been backfilled with non-impacted soil. All work in the utility areas that does not disturb the geofabric marker will be in un-impacted soil, and no special safety plans or procedures are necessary. Utility work in areas not currently planned for utility installation could potentially encounter impacted soil. The Owner will prevent any utility work from being conducted in areas not currently planned for utilities unless arrangements are made to properly handle the soil generated and to ensure the safety of workers in potentially impacted soil (see 5F). In the event of utility work in areas that intersect petroleum impact areas, all utility corridors in such areas shall follow the special procedures set forth above in paragraph 5.C for vapor control including the maintenance

and repair of existing vapor migration controls impacted by the utility work. The Owner is responsible to coordinate with any utility companies that need to excavate on site to ensure that the proper notification of DEQ is made and documented, that the handling of potentially impacted soil and the replacement of the engineered barriers is completed following the Site Management Plan, that proper Health and Safety Plans are prepared and followed, and that dust is controlled during excavation activities.

**F. Worker Health and Safety Requirements**

The Owner is responsible to inform any workers conducting work in the subsurface soils of the potential soil impacts and verify that they have a Health and Safety Plan to address the potential impacts. Level "D" personal protective equipment is required for all personnel performing work that disturbs the caps at the site. Level "D" protection should include, but is not limited to, coveralls, gloves, steel-toed shoes, safety glasses, dust mask, and hardhat. If lead-impacted soils are known or suspected, all employees working in the area must also have OSHA's lead in construction training (29 CFR 1926.62).

The Owner will stop any excavation activities that do not follow a proper Health and Safety plan.

6. Running with the Land. This Environmental Covenant shall be binding upon the Owner so long as the Owner holds title to the Property or any portion thereof or has obligations to DEQ under the VCP Agreement. All assigns and successors in interest, including any Transferee, shall be bound and the Environmental Covenant shall run with the land, pursuant to Utah Code Ann. § 57-25-105, subject to amendment or termination as set forth herein.

7. Compliance Enforcement. Compliance with this Environmental Covenant may be enforced pursuant to Utah Code Ann. § 57-25-111. Failure to timely enforce compliance with this Environmental Covenant or the activity and use limitations contained herein by any party shall not bar subsequent enforcement by such party and shall not be deemed a waiver of the party's right to take action to enforce any noncompliance. Nothing in this Environmental Covenant shall restrict the DEQ from exercising any authority under applicable law. Pursuant to Utah Code Ann. § 19-8-113, if the Property or any portion thereof is put to a use that does not comply with this Environmental Covenant, the Certificate of Completion issued for the Property by the DEQ under Utah Code Ann. §§ 19-8-111 is void on and after the date of the commencement of the noncomplying use.

8. Rights of Access. Owner hereby grants to the DEQ, its agents, contractors, and employees and Holder, the right of access to the Property for implementation or enforcement of this Environmental Covenant.

9. Compliance Reporting. Owner or any Transferee shall submit to the DEQ on an annual basis written documentation verifying that the activity and use

limitations remain in place and are being complied with. Reporting requirements are outlined in the Site Management Plan.

10. Notice upon Conveyance. Each instrument hereafter conveying any interest in the Property or any portion of the Property shall contain a notice of the activity and use limitations set forth in this Environmental Covenant, and provide the recorded location of this Environmental Covenant. The notice shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED \_\_\_\_\_, 200\_, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE COUNTY RECORDER ON \_\_\_\_\_, 200\_, IN [DOCUMENT \_\_\_\_\_, or BOOK \_\_\_\_\_, PAGE \_\_\_\_\_]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:  
*[Insert the language that describes the activity and use. limitations exactly as it appears in the Environmental Covenant.]*

Owner shall notify the DEQ and Holder within thirty (30) business days after each conveyance of an interest in any portion of the Property. Owner's notice shall include the name, address, and telephone number of the Transferee, a copy of the deed or other documentation evidencing the conveyance, and an unsurveyed plat that shows the boundaries of the property being transferred.

11. Representations and Warranties. Owner hereby represents and warrants to the other signatories hereto:

- A. that the Owner is the sole owner of the Property; subject to the interests or encumbrances identified in **Exhibit B** attached hereto and incorporated by reference herein;
- B. that the Owner has the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided and to carry out all obligations hereunder;
- C. that the Owner has identified all other persons that own an interest in or hold an encumbrance on the Property and notified such persons of the Owner's intention to enter into this Environmental Covenant; and
- D. that this Environmental Covenant will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which the Owner is a party or by which Owner may be bound or affected.

12. Amendment or Termination. This Environmental Covenant may be amended or terminated by consent of all of the following: the Owner or a

Transferee; Holder; and the DEQ, pursuant to Utah Code Ann. § 57-25-110 and other applicable law. The term, "Amendment," as used in this Environmental Covenant, shall mean any changes to the Environmental Covenant, including the activity and use limitations set forth herein, or the elimination of one or more activity and use limitations when there is at least one limitation remaining. The term, "Termination," as used in this Environmental Covenant, shall mean the elimination of all activity and use limitations set forth herein and all other obligations under this Environmental Covenant.

This Environmental Covenant may be amended or terminated only by a written instrument duly executed by the DEQ and the Owner or Transferee; and other "Holders," if any; of the Property or portion thereof, as applicable. Within thirty (30) days of signature by all requisite parties on any amendment or termination of this Environmental Covenant, the Owner or Transferee as appropriate shall file such instrument for recording with the Salt Lake County Recorder's Office, and shall provide a file- and date-stamped copy of the recorded instrument to DEQ.

13. Severability. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

14. Governing Law. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Utah.

15. Recordation. Within thirty (30) business days after the date of the final required signature upon this Environmental Covenant, Owner shall file this Environmental Covenant for recording, in the same manner as a deed to the Property, with the Salt Lake County Recorder's Office.

16. Effective Date. The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded as a document of record for the Property with the Salt Lake County Recorder.

17. Distribution of Environmental Covenant. The Owner shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to: the DEQ; the [City] of Murray; any "Holder," any lessee, each person who signed the Environmental Covenant, each person holding a recorded interest in the Property; and any other person designated by the DEQ.

18. Reimbursement of DEQ Oversight. The Owner shall reimburse DEQ in full for all activities contemplated in this Environmental Covenant which require review, inspection, involvement, or otherwise incur costs for DEQ in accordance with the terms and conditions of the Voluntary Cleanup Program Agreement for the former Morgan Hanauer site VCP # C045, executed on March 14, 2006 and on file with the Division of Response and Remediation at the DEQ.



19. Notice. Unless otherwise notified in writing by or on behalf of the current owner or DEQ, any document or communication required by this Environmental Covenant shall be submitted to:

Project Manager (VCP site C045)  
Division of Environmental Response and Remediation DEQ  
P.O. Box 144840  
Salt Lake City, Utah 84114-4840

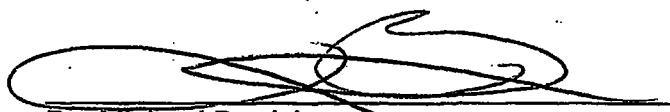
Owner and Holder  
Birkhill at Fireclay LLC  
308 East 4500 South, Suite 200  
Murray, UT 84107

20. Governmental Immunity. In executing this covenant, the State does not waive governmental immunity afforded by law. Owner, for itself and its successors, assigns and Transferees, hereby fully and irrevocably releases and covenants not to sue the State of Utah, its agencies, successors, departments, agents, and employees ("State") from any and all claims, damages, or causes of action arising from, or on account of the activities carried out pursuant to this Environmental Covenant except for an action to amend or terminate the Environmental Covenant pursuant to sections 57-25-109 and 57-25-110 of the Utah Code Ann. or for a claim against the State arising directly or indirectly from or out of actions of employees of the State that would result in (i) liability to the State of Utah under Section 63G-7-301 of the Governmental Immunity Act of Utah (the "Act"), UCA Section 63G-7-101 et seq, or (ii) individual liability for actions not covered by the Act as indicated in Sections 63G-7-202 and -902 of the Act, as determined in a court of law

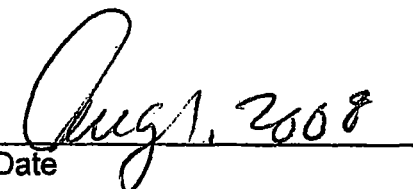
The undersigned representative of Owner represents and certifies that he is authorized to execute this Environmental Covenant.

IT IS SO AGREED:

Birkhill at Fireclay LLC

  
By: Michael Brodsky

\_\_\_\_\_  
Its Manager

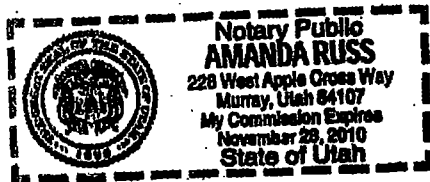
  
Date

State of Utah            )  
                                  )  
County of Salt Lake    )

ss:

Before me, a notary public, in and for said county and state, personally appeared Michael Brodsky a duly authorized representative of Birkhill at Fireclay LLC, who acknowledged to me that [he/she] did execute the foregoing instrument on behalf of Birkhill at Fireclay LLC.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 1<sup>st</sup> day of August, 2008.



Amanda Russ  
Notary Public

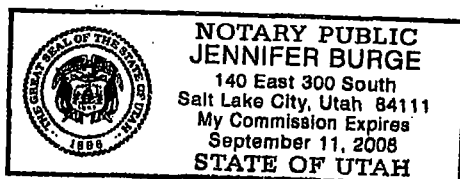
#### UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY

The Utah Department of Environmental Quality authorized representative identified below hereby approves the foregoing Environmental Covenant pursuant to Utah Code Ann. Sections 57-25-102(2) and 57-25-104(1)(e).

By: Brad T Johnson  
Name: Brad T Johnson  
Title: Director, Division of Environmental Response and Remediation,  
Utah Department of Environmental Quality

STATE OF UTAH        )  
                                  ): ss.  
County of Salt Lake    )

Before me, a notary public, in and for said county and state, personally appeared Brad T Johnson, an authorized representative of the Utah Department of Environmental Quality, who acknowledged to me that he did execute the foregoing instrument this 12 day of August, 2008.



Jennifer Burge  
Notary Public  
My Commission expires: 9-11-08

## Exhibit A

### Composite Description (Prepared October 31, 2005 by Stantec Inc.)

A Parcel of land located in the Northeast Quarter of Section 1, Township 2 South, Range 1 West, Salt Lake Base and Meridian, bounded on the North by the 1968 annexation boundary in Big Cottonwood Creek; on the East by Main Street; on the South by the Road Dedication Plat of Fireclay Avenue as recorded in Book 99-11P at Page 310 of the Salt Lake County records; and on the West by the Utah Transit Authority (UTA) Light Rail Corridor, formerly Union Pacific Land Resources Corporation (UPRR), more particularly described as follows:

BEGINNING at the intersection of the 1968 Murray City Annexation Boundary in Big Cottonwood Creek recorded December 31, 1968 in Book GG at Page 18 of the Salt Lake County records and a line 33.00 feet perpendicularly distant westerly of the Main Street monument line, said point being North 87°15'51" East 16.28 feet (North 87°01'34" East 16.16 feet per 1968 Murray City Annexation Plat), North 00°30'11" East 1741.07 feet (North 00°15'54" East 1741.07 feet by record) along said Main Street monument line, and North 76°01'54" East 33.93 feet (North 76°16'11" West 33.93 feet by record) along said 1968 Murray City Annexation Boundary in Big Cottonwood Creek from the East Quarter Corner of Section 1, Township 2 South, Range 1 West, Salt Lake Base and Meridian (Basis of Bearings being North 00°30'11" East 1518.10 feet from the found centerline monument marking the intersection of Fireclay Avenue and Main Street to the found centerline monument marking the intersection of Central Avenue and Main Street), and running thence along said 1968 Murray City Annexation Boundary in Big Cottonwood Creek the following five courses: North 76°01'54" West 23.32 feet (North 76°16'11" West by record), North 39°46'13" West 154.80 feet (North 40°00'30" West by record), North 68°12'37" West 290.80 feet (North 68°26'54" West by record), North 76°43'06" West 457.00 feet (North 76°57'23" West by record), and South 29°27'50" West 50.40 feet (South 29°13'33" West by record) to the easterly right-of-way line of the UTA Light Rail Transit Corridor, formerly Union Pacific Land Resources Corporation (UPRR) as shown on the 1996 Existing Union Pacific Railroad Track Alignment Survey filed as Survey S97-09-0651 in the Salt Lake County Surveyors Office; thence along said easterly right-of-way line the following two courses: South 08°47'37" East 709.28 (South 09°02'48" East by record) and Southerly 216.19 feet along a 2,897.82 foot radius curve to the right through a central angle of 04°16'28" and a long chord of South 06°39'23" East 216.13 feet to a point on the north line of the Road Dedication Plat Fireclay Avenue as recorded in Book 99-11 P at Page 310 of said records; thence along said north line North 89°57'37" East 722.30 feet (North 89°42'43" East 722.44 feet per Road Dedication Plat Fireclay Avenue) to the west line of Main Street; thence along said west line North 00°30'11" East 621.48 feet to the POINT OF BEGINNING.

Containing 658,857 square feet or 15.125 acres.

**Exhibit B (Title Report)**

**SCHEDULE A**

Order Number: SL17131B

Effective Date: July 8, 2008 @ 9:33 a.m.

Amendment: 3

1.	Policy or Policies to be Issued:	Amount	Premium
(a)	ALTA Owner's Policy:	\$	\$0.00

Proposed Insured:

(b)	ALTA Loan Policy	\$	\$0.00
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Proposed Insured:

Endorsements: \$0.00

2. The estate or interest in the land described or referred to in this Commitment and covered herein is fee simple and title thereto is at the effective date hereof vested in:

**BIRKHILL AT FIRECLAY, LLC**

3. The land referred to in this Commitment is described as follows:

See Attached Exhibit "A"

Said property is located in SALT LAKE County, State of Utah also known as:

APPROX 4200 SOUTH MAIN STREET  
MURRAY, UT. 84107

Parcel Identification Number: 21-01-229-004-0000 and 21-01-229-007-thru 018-0000

  
Authorized Countersignature

**US Title**  
Underwriter First American Title

**EXHIBIT "A"****PARCEL No. 1.**

A Parcel of land located in the Northeast Quarter of Section 1, Township 2 South, Range 1 West, Salt Lake Base and Meridian, bounded on the North by the 1968 annexation boundary in Big Cottonwood Creek; on the East by Main Street; on the South by the Road Dedication Plat of Fireclay Avenue as recorded in Book 99-11P at Page 310 of the Salt Lake County records; and on the West by the Utah Transit Authority (UTA) Light Rail Corridor, formerly Union Pacific Land Resources Corporation (UPRR), more particularly described as follows:

BEGINNING at the intersection of the 1968 Murray City Annexation Boundary in Big Cottonwood Creek recorded December 31, 1968 in Book GG at Page 18 of the Salt Lake County records and a line 33.00 feet perpendicularly distant westerly of the Main Street monument line, said point being North 87°15'51" East 16.28 feet (North 87°01'34" East 16.16 feet per 1968 Murray City Annexation Plat), North 00°30'11" East 1741.07 feet (North 00°15'54" East 1741.07 feet by record) along said Main Street monument line, and North 76°01'54" West 33.93 feet (North 76°16'11" West 33.93 feet by record) along said 1968 Murray City Annexation Boundary in Big Cottonwood Creek from the East Quarter Corner of Section 1, Township 2 South, Range 1 West, Salt Lake Base and Meridian (Basis of Bearings being North 00°30'11" East 1518.10 feet from the found centerline monument marking the intersection of Fireclay Avenue and Main Street to the found centerline monument marking the intersection of Central Avenue and Main Street), and running thence along said 1968 Murray City Annexation Boundary in Big Cottonwood Creek the following five courses: North 76°01'54" West 23.32 feet (North 76°16'11" West by record), North 39°46'13" West 154.80 feet (North 40°00'30" West by record), North 68°12'37" West 290.80 feet (North 68°26'54" West by record), North 76°43'06" West 457.00 feet (North 76°57'23" West by record), and South 29°27'50" West 50.40 feet (South 29°13'33" West by record) to the easterly right-of-way line of the UTA Light Rail Transit Corridor, formerly Union Pacific Land Resources Corporation (UPRR) as shown on the 1996 Existing Union Pacific Railroad Track Alignment Survey filed as Survey S97-09-0651 in the Salt Lake County Surveyors Office; thence along said easterly right-of-way line the following two courses: South 08°47'37" East 709.28 (South 09°02'48" East by record) and Southerly 216.19 feet along a 2,897.82 foot radius curve to the right through a central angle of 04°16'28" and a long chord of South 06°39'23" East 216.13 feet to a point on the north line of the Road Dedication Plat Fireclay Avenue as recorded in Book 99-11P at Page 310 of said records; thence along said north line North 89°57'37" East 722.30 feet (North 89°42'43" East 722.44 feet per Road Dedication Plat Fireclay Avenue) to the west line of Main Street; thence along said west line North 00°30'11" East 621.48 feet to the POINT OF BEGINNING.

**PARCEL No. 2**

LOTS A,B,G and 101 through 109, BIRKHILL PHASE No. 1- AMENDED; according to the official plat thereof, on file and of record in the County Recorder's Office.

Situated in SALT LAKE County

Parcel Identification Number: 21-01-229-004-0000 and 21-01-229-007-thru 018-0000

**SCHEDULE B - SECTION 1**  
**Requirements**

The following are the requirements to be complied with:

- (1) Pay the Agreed amounts for the Interest in the land and/or the mortgage to be Insured.
- (2) Pay us the premiums, fees and charges for the policy.
- (3) Documents satisfactory to us creating the Interest in the land and/or the mortgage to be Insured must be signed, delivered and recorded.
- (4) You must tell us in writing the name of anyone not referred to in this Commitment who will get an Interest in the land or who will make a loan on the land. We may then make additional requirements or exceptions.
- (5) After we have received the information requested in these requirements, together with any other information about the transaction, we will have the right to add requirements to this Schedule B-1 or special exceptions to Schedule B-2.
6. Additional requirements may be added when more is learned about the contemplated transaction.

**SCHEDULE B - Section 2**  
**Exceptions**

Any Policy we insure will have the following exceptions unless they are taken care of to our satisfaction.

**Part I:**

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary line, shortage in area, encroachments or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. Unpatented mining claim: reservations or exceptions in patents or in acts authorizing the issuance thereof: water rights, claims, or title to water.
6. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.
7. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date of the proposed insured acquires of record for value the estate or interest or mortgage thereon covered by this commitment

\*\*\*\*\*

8. General property taxes for year 2008 are now a lien, not yet due. Tax ID No. 21-01-229-004-0000 and 21-01-229-007 thru 018-0000.
9. 2007 general property taxes were paid in the amount of \$15,362.73. Tax ID No. 21-01-229-003-0000.

(Continued)



**SCHEDULE B - Section 2**  
**(Exceptions continued)**

10. Any charge upon the land by reason of its inclusion in Murray City and Cottonwood Improvement District.

There are no assessments currently a lien upon the property.

11. The "MURRAY CITY Ordinance No. 05-32 ("Adopting an Ordinance Designating the FIRECLAY PROJECT AREA PLAN AS THE OFFICIAL REDEVELOPMENT PLAN FOR THE FIRECLAY PROJECT AREA.") executed by the Murray City Municipal Council recorded December 2, 2005 as Entry No. 9570584 in Book 9225 at Page 2597 of Official Records.
12. The "MURRAY CITY Ordinance No. 05-06 ("Adopting an Ordinance Approving an Amendment to the CENTRAL BUSINESS DISTRICT NEIGHBORHOOD DEVELOPMENT PLAN ADOPTED IN 1977, AMENDED IN 1982 AND 1999, TO DELETE A PORTION OF THE PROJECT AREA") executed by the Redevelopment Agency of Murray City recorded December 2, 2005 as Entry No. 9570586 in Book 9225 at Page 2613 of Official Records, and Re-recorded December 7, 2005 as Entry No. 9574402 in Book 9227 at Page 63 of Official Records, to correct the legal description.
13. Reservations contained within that certain Special Warranty Deed, by and between UNION PACIFIC LAND RESOURCES CORPORATION, as Grantor, and GIBBONS REALTY COMPANY, as Grantee, recorded December 27, 1978, as Entry No 3216075, in Book 4791, at Page 1246, and re-recorded on May 21, 1979, as Entry No. 3282400, in Book 4865, at Page 1344, of Official Records, which recites in part as follows:

"EXCEPTING from this grant and reserving unto the GRANTOR, its successors and assigns forever, all mineral and all mineral rights of every kind and character now known to exist or hereafter discovered, including, without limiting the generality of the foregoing, oil and gas and rights thereto, together with the sole, exclusive and perpetual right to explore for, remove and dispose of said minerals by any means or methods suitable to the GRANTOR, its successors or assigns, but without entering upon or using the surface of the lands hereby conveyed and in such manner as not to damage the surface of said lands, or to interfere with the use thereof by the GRANTEE, its successors and assigns.

AND ALSO EXCEPTING from this grant and reserving unto the GRANTOR, its successors and assigns forever, an easement for view along and upon a thirty-seven (37) foot wide strip on the west side of, the property herein conveyed abutting on the west line of said property running north and south and extending two hundred (200) feet to the north from the north line of Fireclay Avenue and GRANTEE, by acceptance of this conveyance, agrees, for itself, its successors and assigns, as a covenant running with the land, not to erect any buildings on said strip of land, nor shall GRANTEE, or its successors and assigns, erect any structures, or permit any trees or shrubbery to grow, above a height of six (6) feet on said strip of land."

(Continued)

**SCHEDULE B - Section 2.**  
**(Exceptions continued)**

14. Subject to all easements, notes, building set-backs, conditions, restrictions, and stipulation as set forth on the recorded plat.
15. Easement, in favor of Mill Creek Power Company, recorded November 15, 1910, as Entry No. 273068, in Book 7Y, at Page 200, of Official Records.
16. Pole Line Easement, in favor of UTAH POWER & LIGHT COMPANY, for a perpetual easement and right of way for the erection, and continued maintenance, repair, alteration and replacement of the electric transmission, distribution and telephone circuits, poles, guys, stubs, cross-arms, and other attachments thereon, or affixed thereto, for the support of said circuits to be erected and maintained upon, over, under and across a portion of the subject property. Said Easement was recorded December 15, 1949, as Entry No. 1181648, in Book 728, at Page 67, of Official Records.
17. Pole Line Easement, in favor of UTAH POWER & LIGHT COMPANY, for a perpetual easement and right of way for the erection, and continued maintenance, repair, alteration and replacement of the electric transmission, distribution and telephone circuits, poles, guys, stubs, cross-arms, and other attachments thereon, or affixed thereto, for the support of said circuits to be erected and maintained upon, over, under and across a portion of the subject property. Said Easement was recorded May 14, 1957, as Entry No. 1538697, in Book 1413, at Page 3, of Official Records.
18. Pole Line Easement, in favor of UTAH POWER & LIGHT COMPANY, for a perpetual easement and right of way for the erection, and continued maintenance, repair, alteration and replacement of the electric transmission, distribution and telephone circuits, poles, guys, stubs, cross-arms, and other attachments thereon, or affixed thereto, for the support of said circuits to be erected and maintained upon, over, under and across a portion of the subject property. Said Easement was recorded February 13, 1959, as Entry No. 1636792, in Book 1587, at Page 87, of Official Records.
19. Pole Line Easement, in favor of UTAH POWER & LIGHT COMPANY, for a perpetual easement and right of way for the erection, and continued maintenance, repair, alteration and replacement of the electric transmission, distribution and telephone circuits, poles, guys, stubs, cross-arms, and other attachments thereon, or affixed thereto, for the support of said circuits to be erected and maintained upon, over, under and across a portion of the subject property. Said Easement was recorded March 12, 1964, as Entry No. 1985289, in Book 2165, at Page 189, of Official Records.

(Continued)

SCHEDULE B - Section 2  
(Exceptions continued)

20. Right of Way Easement For Pole(s), Guy(s), Anchor(s), in favor of PACIFICORP, an Oregon corporation, granting an easement for a right of way for the construction, maintenance, repair, replacement and removal of pole(s), anchor(s), guy(s) and appurtenances thereto on, over or under the surface of the property, recorded October 27, 1998, as Entry No. 7131353, in Book 8138, at Page 0142, of Official Records.

(NOTE: The exact location of said easement is not described)

21. A Right-of-way and Easement Grant, to lay, maintain, operate, repair, inspect, protect, remove and replace gas transmission pipelines and related facilities, and incidental purposes, as granted to Questar Gas Company, a Corporation of the State of Utah, and made subject to the terms and conditions contained in the document recorded July 8, 2008 as Entry No. 10473067 in Book 9624 at Page 8055 of Official Records.

22. Excepting any portion of the land within the natural bed of Big Cottonwood Creek below the ordinary high water mark where it was located prior to any artificial or avulsive changes in the location of the shoreline.

23. Participation and Development Agreement by and between Redevelopment Agency of Murray City and Hamlet Development Corporation, and the terms and conditions contained in the document dated December 4, 2007, recorded December 19, 1997 as Entry No. 10303655 in Book 9549 at Page 8425 of Official Records.

24. Subject to the following matters disclosed on that certain survey prepared by STANTEC CONSULTING INC., having been certified under the date of November 18, 2005, as Job No. 18683203000, by Matt W. Clark, a Registered Land Surveyor holding License No. 323716. Said matters include, but are not limited to, the following: Fence Line Discrepancies, Utility Poles and Overhead Lines.

(The following exception affects Parcel No. 1 only)

25. A Deed of Trust by and between SCOTT'S LAND, LLC, A UTAH LIMITED LIABILITY COMPANY as Trustor in favor of FIRST AMERICAN TITLE INSURANCE COMPANY as Trustee and Wells Fargo Bank, National Association as Beneficiary, to secure an original indebtedness of \$1,872,000.00 and any other amounts or obligations secured thereby, dated May 23, 2007 and recorded June 8, 2007 as Entry No. 10126986 in Book 9475 at Page 8410 of Official Records.

A document recorded February 1, 2008 as Entry No. 10338471 in Book 9565 at Page 7713 of Official Records provides that the Deed of Trust or the obligation secured thereby has been modified.

(Continued)

**SCHEDULE B - Section 2**  
**(Exceptions continued)**

A document entitled "Assumption and Second Modification Agreement" recorded February 1, 2008 as Entry No. 10338470 in Book 9565 at Page 7708 of Official Records provides that the Deed of Trust or the obligation secured thereby has been modified.

NOTE: Document also serves as an Assumption Agreement wherein the obligation of the above Deed of Trust with Scott's Land, LLC as original trustor is now assumed by Birkhill at Fireclay, LLC.

(The following two (2) exceptions affect Parcel No. 2 only)

26. A Construction Trust Deed, Assignment of Rents, Security Agreement and Fixture Filing by and between Birkhill at Fireclay, LLC, a Utah Limited Liability Company as Trustor in favor of FIRST AMERICAN TITLE INSURANCE COMPANY as Trustee and Wells Fargo Bank, National Association as Beneficiary, to secure an original indebtedness of \$678,000.00 and any other amounts or obligations secured thereby, dated May 23, 2007 and recorded June 6, 2007 as Entry No. 10126988 in Book 9475 at Page 8442 of Official Records.

ADDITIONAL ADVANCE AND CONSOLIDATION AGREEMENT, wherein said document provides for a modification of the above Deed of Trust to advance an additional \$2,273,500.00, Instrument recorded July 26, 2007 as Entry No. 10175168 in Book 9495 at Page 9561 of Official records.

A document recorded February 1, 2008 as Entry No. 10338449 in Book 9565 at Page 7563 of Official Records provides that the Deed of Trust or the obligation secured thereby has been modified.

27. A Deed of Trust by and between Birkhill at Fireclay, LLC as Trustor in favor of First American Title Insurance Company as Trustee and Wells Fargo Bank, National Association as Beneficiary, to secure an original indebtedness of \$8,566,300.00 and any other amounts or obligations secured thereby, dated January 29, 2008 and recorded February 1, 2008 as Entry No. 10338468 in Book 9565 at Page 7677 of Official Records.

28. SECURITY AGREEMENT RE: TIF AGREEMENT, by and between Hamlet Development Corporation, a Utah Corporation and Wells Fargo Bank, N.A., and the terms and conditions contained in Instrument recorded February 1, 2008 as Entry No. 10338450 in Book 9565 at Page 7572 of Official Records.

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(Continued)

**SCHEDULE B - Section 2**  
**(Exceptions continued)**

NOTE: The name of Birkhill at Fireclay, LLC have been checked for Judgments and Tax Liens, etc., in the appropriate offices and if any were found would appear as Exceptions to title under Schedule B, Section 2 herein.

ESCROW/CLOSING INQUIRIES should be directed to your Escrow Officer: Becky Phillips at (435)615-1148 at 1760 Prospector Avenue, Park City, Utah 84060.

Title inquiries should be directed to Scott Nance at (801)208-1196.

NOTE: The Policy(ies) to be issued as a result of this Commitment may contain an Arbitration Clause. When the Amount of Insurance is less than the certain dollar amount set forth in any applicable arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. If you desire to review the terms of the policy, including any arbitration clause that may be included, contact the office that issued this Commitment or Report to obtain a sample of the policy jacket for the policy that is to be issued in connection with your transaction.

**The First American Corporation  
US Title of Utah**

**Privacy Policy**

**We Are Committed to Safeguarding Customer Information**

In order to better serve your needs now and in the future, we may ask you to provide us with certain information. We understand that you may be concerned about what we will do with such information - particularly any personal or financial information. We agree that you have a right to know how we will utilize the personal information you provide to us. Therefore, together with our parent company, The First American Corporation, we have adopted this Privacy Policy to govern the use and handling of your personal information.

**Applicability**

This Privacy Policy governs our use of the information which you provide to us. It does not govern the manner in which we may use information we have obtained from any other source, such as information obtained from a public record or from another person or entity. First American has also adopted broader guidelines that govern our use of personal information regardless of its source. First American calls these guidelines its Fair Information Values, a copy of which can be found on our website at [www.firstam.com](http://www.firstam.com).

**Types of Information**

Depending upon which of our services you are utilizing, the types of nonpublic personal information that we may collect include:

- Information we receive from you on applications, forms and in other communications to us, whether in writing, in person, by telephone or any other means;
- Information about your transactions with us, our affiliated companies, or others; and
- Information we receive from a consumer reporting agency.

**Use of Information**

We request information from you for our own legitimate business purposes and not for the benefit of any nonaffiliated party. Therefore, we will not release your information to nonaffiliated parties except: (1) as necessary for us to provide the product or service you have requested of us; or (2) as permitted by law. We may, however, store such information indefinitely, including the period after which any customer relationship has ceased. Such information may be used for any internal purpose, such as quality control efforts or customer analysis. We may also provide all of the types of nonpublic personal information listed above to one or more of our affiliated companies. Such affiliated companies include financial service providers, such as title insurers, property and casualty insurers, and trust and investment advisory companies, or companies involved in real estate services, such as appraisal companies, home warranty companies, and escrow companies. Furthermore, we may also provide all the information we collect, as described above, to companies that perform marketing services on our behalf, on behalf of our affiliated companies, or to other financial institutions with whom we or our affiliated companies have joint marketing agreements.

**Former Customers**

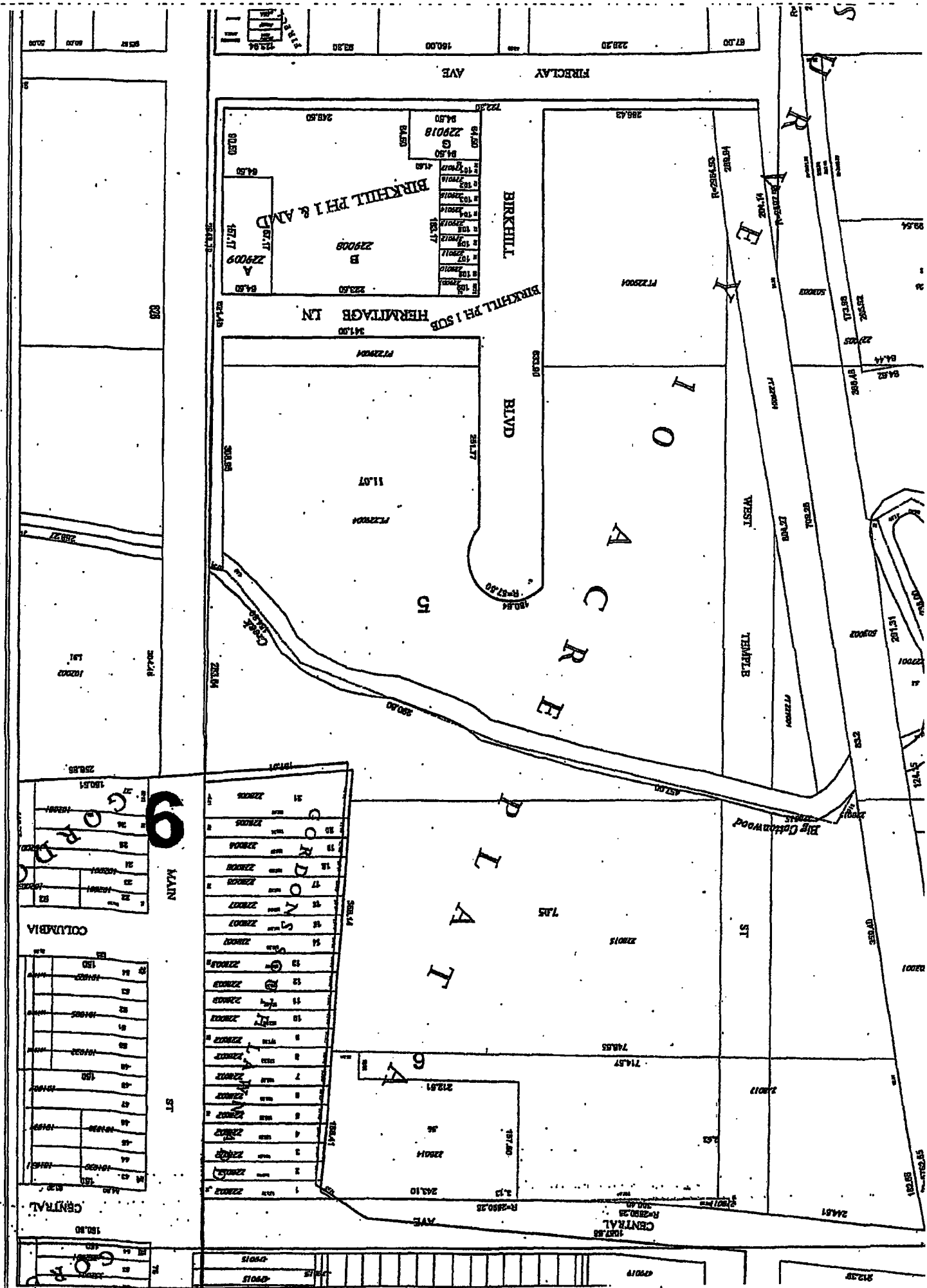
Even if you are no longer our customer, our Privacy Policy will continue to apply to you.

**Confidentiality and Security**

We will use our best efforts to ensure that no unauthorized parties have access to any of your information. We restrict access to nonpublic personal information about you to those individuals and entities who need to know that information to provide products or services to you. We will use our best efforts to train and oversee our employees and agents to ensure that your information will be handled responsibly and in accordance with the Privacy Policy and First American's Fair Information Values. We currently maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

## CONDITIONS

1. The term mortgage, when used herein, shall include deed of trust, trust deed, or other security instrument.
2. If the proposed Insured has or acquired actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to disclose such knowledge. If the proposed Insured shall disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, the Company, at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of this Conditions and Stipulations.
3. Liability of the Company under this Commitment shall be only to the named proposed Insured and such parties included under the definition of Insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the Insuring liability and Conditions and Stipulations and the Exclusions from Coverage of the form of policy or policies committed for in favor of the proposed Insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.
4. This Commitment is a contract to issue one or more title insurance policies and is not an abstract of title or a report of the condition of title. Any action or actions or rights of action that the proposed Insured may have or may bring against the Company arising out of the status of the title to the estate or interest or the status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.
5. The policy to be issued contains an arbitration clause. All arbitrable matters when the Amount of Insurance of \$2,000,000.00 or less shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. You may review a copy of the arbitration rules at <http://www/alta.org/>.







10473067

**WHEN RECORDED MAIL TO:**

Questar Gas Company  
P.O. Box 45360, Right-of-way  
Salt Lake City, UT 84145-0360  
3575birk.le; RW01

10473067

07/08/2008 09:33 AM \$20.00  
Book - 9624 Pg - 8055-8057  
GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
QUESTAR GAS COMPANY  
PO BOX 45360  
SLC UT 84145-0360  
BY: ZOM, DEPUTY - WI 3 P.

Space above for County Recorder's use  
PARCEL I.D.# 21-01-229-006

**RIGHT-OF-WAY AND EASEMENT GRANT**  
UT 22953

**BIRKHILL AT FIRECLAY, L.L.C., A Utah Limited Liability Company**

"Grantor", does hereby convey and warrant to QUESTAR GAS COMPANY, a corporation of the State of Utah, "Grantee", its successors and assigns, for the sum of ONE DOLLAR (\$1.00) in hand paid and other good and valuable consideration, receipt of which is hereby acknowledged, a right-of-way and easement (referred to in this Grant as the "Easement") to lay, maintain, operate, repair, inspect, protect, remove and replace pipelines, valves, valve boxes and other gas transmission and distribution facilities (referred to in this Grant collectively as "Facilities") as follows: Nine feet on each side of the centerlines shown on the attached plat, designated Exhibit "A", and by reference made a part of this Grant, which centerlines are within that certain development known as Birkhill Phase 1 Subdivision, in the vicinity of 4300 S. Main Street, which development is more particularly described as:

Land of Grantor located in the Northeast Quarter of Section 1, Township 2 South,  
Range 1 West, Salt Lake Base and Meridian;

Lot 1, Birkhill Phase 1 Subdivision; according to the official plat on file with the  
Salt Lake County Recorder, State of Utah.

TO HAVE AND TO HOLD the same unto its successors and assigns, so long as Grantee shall require with the right of ingress and egress to and from the Easement to maintain, operate, repair, inspect, protect, remove and replace the Facilities. During temporary periods, Grantee may use such portion of the property along and adjacent to the Easement as may be reasonably necessary in connection with construction, maintenance, repair, removal or replacement of the Facilities. Grantor(s) shall have the right to use the surface of the Easement except for the purposes for which this Easement is granted provided such use does not interfere with the Facilities or any other rights granted to Grantee by this Grant.



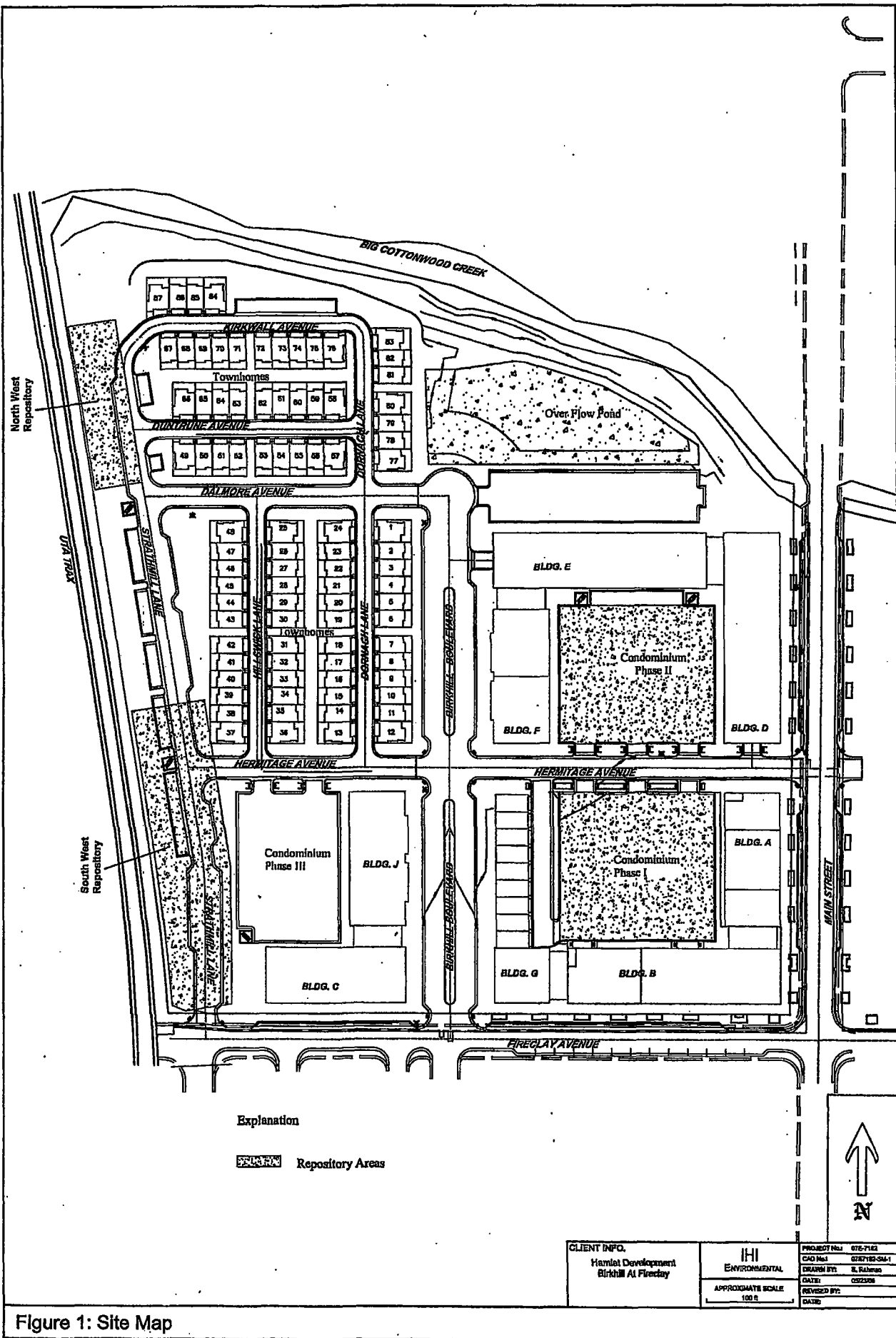


Figure 1: Site Map

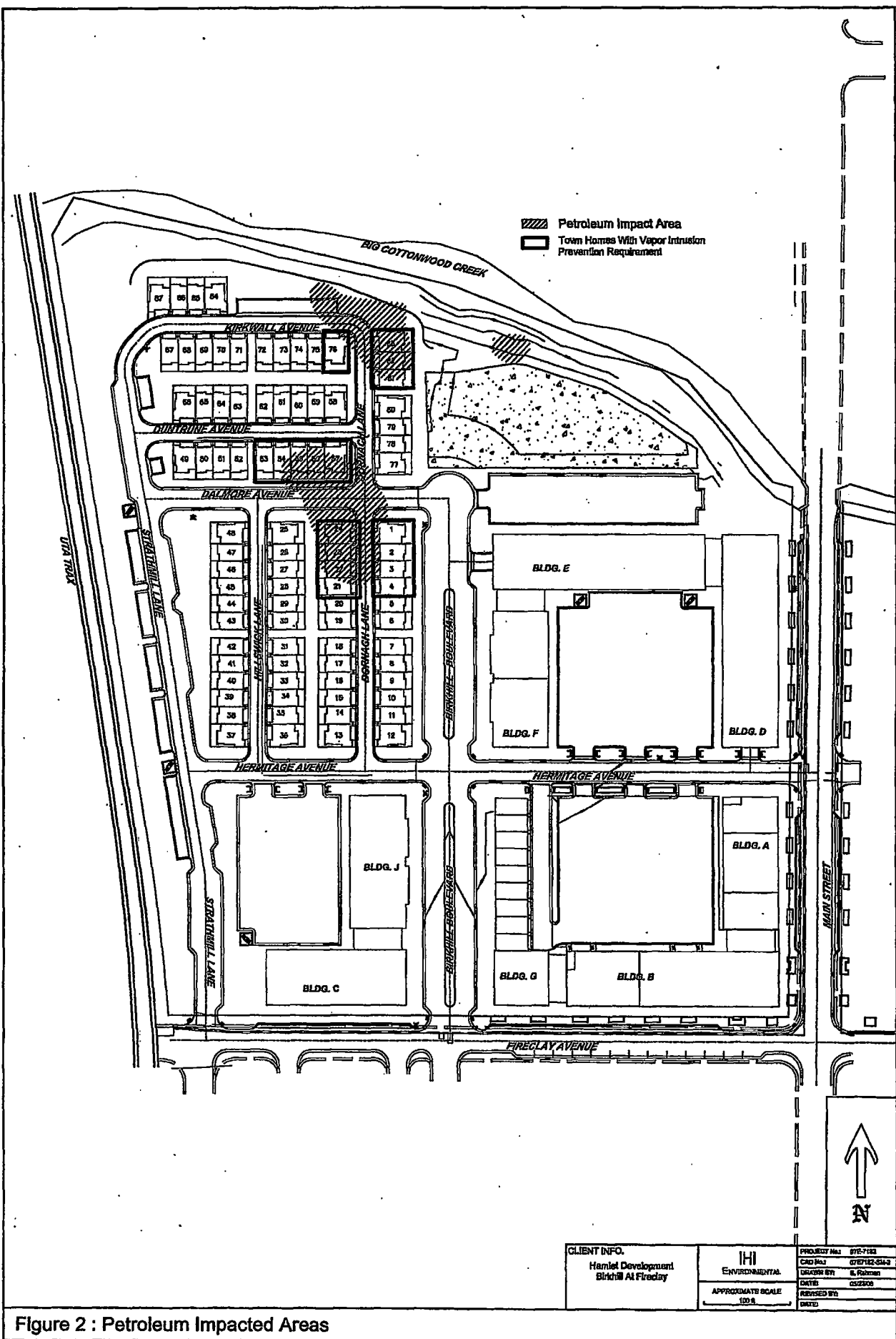


Figure 2 : Petroleum Impacted Areas

<b>CLIENT INFO.</b> Hamlet Development Birchill At Fireclay	<b>IHI</b> ENVIRONMENTAL APPROXIMATE SCALE 100 ft	PROJECT NO. 070-1102
		CDD NO. 070102-043
		DATED BY 0.0000
		REVISED BY 02/2003